

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 17-1355V

Filed: May 29, 2019

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HERBERT GELLER,

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UNPUBLISHED

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Petitioner,

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v.

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Ruling on Entitlement;

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Influenza (“Flu”) Vaccine;

SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Brachial Neuritis

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Respondent.

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Leah Durant, Esq., Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.
Claudia Gangi, Esq., U.S. Department of Justice, Washington, DC, for respondent.

RULING ON ENTITLEMENT¹

Roth, Special Master:

On September 27, 2017, Herbert Geller (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program (“the Program”)² alleging that he received an influenza (“flu”) vaccination on September 22, 2015, and thereafter suffered from brachial neuritis. *See* Petition at 1.

Respondent filed his Rule 4(c) Report (“Resp. Rpt.”) on July 11, 2018, recommending against compensation in this matter. Resp. Rpt. at 10, ECF No. 14.

¹ Although this Decision has been formally designated “unpublished,” it will nevertheless be posted on the Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). **This means the Decision will be available to anyone with access to the internet.** However, the parties may object to the Decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the whole Decision will be available to the public. *Id.*

² The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

On December 7, 2018, petitioner filed an expert report from Dr. Ahmet Hoke in support of his claim. Pet. Ex. 9, ECF No. 16.

On May 28, 2019, respondent filed an amended Rule 4(c) Report (“Am. Rpt.”), stating that, in light of Dr. Hoke’s report, respondent would not contest entitlement to compensation in this case. Am. Rpt. at 8, ECF No. 20.

A special master may determine whether a petitioner is entitled to compensation based upon the record. A hearing is not required. §300aa-13; Vaccine Rule 8(d). In light of respondent’s position and a review of the record, the undersigned finds that petitioner is entitled to compensation. This matter shall now proceed to the damages phase.

IT IS SO ORDERED.

s/Mindy Michaels Roth

Mindy Michaels Roth
Special Master